

Brandt L. Wolkin, Esq. SBN 112220  
David F. Myers, Esq., SBN 185102  
Wolkin · Curran, LLP  
555 Montgomery Street, Suite 1100  
San Francisco, California 94111  
Telephone: (415) 982-9390  
Facsimile: (415) 982-4328

Attorneys for Plaintiff,  
NIC INSURANCE COMPANY

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

NIC INSURANCE COMPANY, a New York  
Corporation,

Plaintiff,

v.

APPIAN CONSTRUCTION CO., INC., a  
California Corporation; 1221  
MONTICELLO, L.P., a California Limited  
Partnership and DOES 1 through 50,  
inclusive,

Defendants.

Case No. C 07-05988 CW

**SECOND JOINT REPORT OF COUNSEL**

**Date: September 2, 2008**

**Time: 2:00 p.m.**

**Location:**

The following report is jointly submitted by all counsel pursuant to the Court's Minute Order and Case Management Order dated March 20, 2008.

**A SETTLEMENT IN PRINCIPLE HAS BEEN REACHED IN BOTH THE INSTANT CASE  
AND THE UNDERLYING STATE COURT CONSTRUCTION DEFECT ACTION  
AND THE PARTIES ARE IN THE PROCESS OF EXECUTING  
THE NECESSARY SETTLEMENT DOCUMENTS**

Since the last Case Management Conference held in this case on March 11, 2008, the parties to the instant case participated in a private mediation conducted jointly for the instant case as well as the

1 underlying construction defect action pending in Contra Costa County Superior Court, titled *Manley v.*  
2 *Appian, et al.*, Case No. C-05-00358 (the “**Underlying Action**”). An agreement in principle to settle both  
3 cases was reached and, since that time, the parties have exchanged multiple drafts of settlement documents.  
4 The defendants in the instant case, Appian Construction Co., Inc. (“**Appian**”) and 1221 Monticello LP  
5 (“**Monticello**”), have signed the settlement agreement in the Underlying Action and the settlement  
6 agreement for the instant action. The settlement agreement in the instant case also calls for the signing of  
7 several additional documents, including: (1) a Stipulated Judgment in the instant case, which Montecito,  
8 Appian and Plaintiff Navigators Insurance Co. (“**NIC**”) have signed; (2) a promissory note, which  
9 Montecito and Appian have signed; and (3) four deeds of trust to secure the promissory note, which  
10 Montecito and Appian have not yet signed. Montecito and Appian are searching for a trustee to serve under  
11 the four deeds of trust, and expect to have them signed prior to the Case Management Conference in this  
12 matter scheduled for September 2, 2008.

13 According to the last report counsel in the instant case received from counsel in the Underlying  
14 Action, five out of the sixteen signatories to the settlement agreement in the Underlying Action have not yet  
15 signed. The experience of counsel for Appian, Monticello and NIC is that there are frequently a few parties  
16 in construction defect cases who delay signing settlement agreements for some period, but ultimately sign.  
17 Counsel in the instant case cannot guarantee that will occur, but would be surprised if the few remaining  
18 subcontractors who have not yet signed the settlement agreement do not sign within a month.

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1 Based on the above-reported status of this, and the related, actions, counsel jointly request that the  
2 Court set this matter for a further Case Management Conference in approximately sixty days for the purpose  
3 of confirming completion of all remaining formalities associated with the settlements in principal reached in  
4 all of the related actions.

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6 DATED: August 19, 2008

WOLKIN CURRAN, LLP

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8 By: /s/ David F. Myers  
Brandt L. Wolkin  
David F. Myers  
Attorneys for Plaintiff  
9  
10 NIC INSURANCE COMPANY

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12 DATED: August 19, 2008

JACKSON DEMARCO TIDUS &  
PECKENPAUGH

13  
14 By: /s/ Edward A. Galloway  
Edward A. Galloway  
Attorneys for Defendants  
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16 APIAN CONSTRUCTION COMPANY, INC and  
1221 MONTICELLO, LP  
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